

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUMAN RIGHTS DEFENSE CENTER,
Plaintiff.

V.

UNITED STATES DEPARTMENT OF
JUSTICE et al.,
Defendants.

CASE NO. 2:20-cv-00674-JHC
ORDER

I

This matter comes before the Court on outstanding issues in the second set of cross-motions for summary judgment submitted by Plaintiff Human Rights Defense Center (HRDC) and Defendants United States Department of Justice and its law enforcement component the Drug Enforcement Administration (collectively, Defendants or the DEA). *See* Dkt. ## 53, 55. In its previous order on summary judgment, *see* Dkt. # 60, the Court reserved ruling on certain issues, including the redactions in Files 24, 63, and 138 and attorney fees, and directed the DEA to submit Files 63 and 138 for in camera review and to file a supplemental brief and supporting declaration to provide more information related to the redaction in File 24. *Id.* at 29–31.

1 Defendants have submitted in camera Files 63 and 138, and a supplemental brief and
2 accompanying declaration. *See* Dkt. ## 61, 62. The Court has reviewed these documents; the
3 materials filed in support of, and in opposition to, the cross-motions for summary judgment; and
4 the governing law. For the reasons discussed below, the Court resolves the remaining issues at
5 summary judgment, *see* Dkt. ## 53, 55, concluding that (1) Defendants properly invoked
6 exemption 6 when redacting the information at issue in Files 24, 63, and 138, and (2) that HRDC
7 is eligible and entitled to attorney fees.

8

II
DISCUSSION

9

10 A. Files 63 and 138

11 After in camera review of Files 63 and 138, the Court determines that the DEA correctly
12 redacted the information at issue under FOIA exemption 6. *See* Dkt. # 54-1 at 19; 21–22; *see*
13 U.S.C. § 552(b)(6) (allowing agencies to withhold “personnel and medical files and similar files
14 the disclosure of which would constitute a clearly unwarranted invasion of personal privacy”).
15 The block redaction in File 63, *see* Dkt. # 54-1 at 19, removes information about the claimants’
16 personal and employment history and is not reasonably segregable. *Cf.* 5 U.S.C. § 552(b) (“Any
17 reasonably segregable portion of a record shall be provided to any person requesting such record
18 after deletion of the portions which are exempt under this subsection.”). The block redactions of
19 two footnotes in File 138, *see* Dkt. # 54-1 at 21–22, are also proper as they consist of non-
20 segregable information that—if disclosed—could reasonably identify the claimant and other
21 individuals involved in the claim.

22 Because the Court has recognized that private claimants have nontrivial privacy interests,
23 and the public interest sought to be advanced by disclosure is not significant enough to outweigh
24 those interests, the Court determines that the DEA properly invoked FOIA exemption 6 when it

1 redacted this information. *See* Dkt. # 33 at 14–16; Dkt. 60 at 9–10, 18; *U.S. Dep’t of Justice v.*
2 *Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989); *Bibles v. Oregon Nat.*
3 *Desert Ass’n*, 519 U.S. 355, 355–56 (1997).

4 B. File 24

5 The Court has also reviewed the DEA’s supplemental brief and declaration related to the
6 redaction of information in File 24. *See* Dkt. ## 61, 62. The Court had directed the DEA “to
7 submit a supplemental brief and a supporting declaration, . . . which includes the DEA
8 Academy’s comprehensive enrollment numbers and relevant demographic information so the
9 Court may determine whether the Academy’s ‘limited’ enrollment precludes HRDC’s access to
10 the information at issue.” Dkt. # 60 at 26. In its supplemental brief, DEA says that the total
11 enrollment in all DEA Academy classes for 2012 was estimated to be 388 enrollees, and of the
12 353 trainees who graduated, only 74 of those graduates were women. Dkt. # 61 at 2–3; Dkt. # 62
13 at 3–5.

14 After review of these limited enrollment figures, the Court concludes that the disclosure
15 of the redacted information related to the private claimant’s training and proficiency while
16 enrolled at the DEA Academy could disclose her identity to those familiar with her situation.
17 *See Freedom of Press*, 489 U.S. at 768 (“[W]hat constitutes identifying information regarding a
18 [claimant] must be weighed not only from the viewpoint of the public, but also from the vantage
19 of those who would have been familiar” with aspects of the background of the claim.). In accord
20 with the Court’s first summary judgment order that recognizes that private citizen claimants
21 “have more than a de minimis privacy interest in preventing the disclosure of their identities[,]”
22 which the public interest in disclosure does not overcome, *see* Dkt. # 33 at 14–16, the DEA
23 properly invoked exemption 6 as to these redactions.

1 C. Attorney Fees

2 In its previous summary judgment order, *see* Dkt. # 60 at 29–30, the Court reserved
 3 ruling on whether HRDC was eligible and entitled to attorney fees under the statute. 5 U.S.C. §
 4 552(a)(4)(E)(ii). Because the Court has now resolved all pending merit issues at summary
 5 judgment, the Court determines HRDC’s eligibility and entitlement as follows.

6 “To obtain an award of attorney fees under the FOIA, a plaintiff must demonstrate both
 7 eligibility and entitlement to the award.” *Oregon Nat. Desert Ass’n v. Locke*, 572 F.3d 610, 614
 8 (9th Cir. 2009). To show eligibility for an award of attorney fees, a plaintiff must show that they
 9 have “substantially prevailed” by obtaining relief either through (1) a judicial order or (2) a
 10 voluntary or unilateral change in position by the agency. 5 U.S.C. § 552(a)(4)(E)(ii); *First*
 11 *Amend. Coal.*, 878 F.3d at 1127. To do so, a plaintiff must “present ‘convincing evidence’ that
 12 the filing of the action ‘had a substantial causative effect on the delivery of the information.’”
 13 *First Amend. Coal.*, 878 F.3d at 1127 (quoting *Church of Scientology of Cal. v. U.S. Postal Serv.*,
 14 700 F.2d 486, 489 (9th Cir. 1983)). Courts consider three factors in evaluating whether a
 15 plaintiff has shown a causative effect: (1) when the documents were released; (2) what triggered
 16 the release of the documents; and (3) whether the plaintiff was entitled to the documents at an
 17 earlier time. *Id.* at 1129 (citing *Church of Scientology*, 700 F.2d at 492).

18 Next, a plaintiff must establish entitlement to the award by applying a balancing test
 19 under *Hiken v. Department of Defense*; the Court considers: (1) the public benefit from
 20 disclosure; (2) any commercial benefit to the plaintiff resulting from disclosure; (3) the nature of
 21 the plaintiff’s interest in the disclosed records; and (4) whether the government’s withholding of
 22 the records had a reasonable basis in law. 836 F.3d 1037, 1044 (9th Cir. 2016) (quoting *Long v.*
 23 *I.R.S.*, 932 F.2d 1309, 1313 (9th Cir. 1991)).

1 In its second motion for summary judgment, HRDC contends that, after applying the
 2 *First Amendment Coalition* and *Hiken* factors, it is entitled to an award of attorney fees and
 3 costs. Dkt. # 53 at 17–22. The DEA opposes and—without applying either the *First Amendment*
 4 *Coalition* or the *Hiken*¹ factors—asks the Court to “again defer any decision on attorney’s fees
 5 until all merits issues are resolved.” Dkt. # 55 at 22–23; *see* Dkt. # 59 at 17. The DEA, without
 6 disputing HRDC’s analysis under either of the applicable tests, contends that “[e]ven after the
 7 Court rules on this second round of summary judgment motions, merit issues will linger[,]”
 8 precluding a finding on fee eligibility and entitlement because “the Court has stayed a part of its
 9 summary judgment order that requires the DEA to produce the names of its employees who are
 10 alleged tortfeasors/wrongdoers.” Dkt. # 55 at 22–23.

11 The Court disagrees. In its first summary judgment order, the Court directed the DEA to
 12 disclose the names of any alleged DEA employee tortfeasors/wrongdoers disclosed in its files.
 13 Dkt. # 33 at 21, 33. But—on motion by the DEA, *see* Dkt. # 42—the Court stayed any such
 14 disclosures pending the Ninth Circuit’s consideration on appeal; the Court recognized that if
 15 these names were released, and its decision was ultimately overturned, the disclosure of these
 16 names could not be undone. *See* Dkt. # 47. Still, the Court’s decision to stay the disclosure of
 17 this narrow portion of the first motion for summary judgment was not a commentary on the
 18 merits of the Court’s decision—one that found for HRDC—but was a recognition of the potential
 19 consequences if the Ninth Circuit reaches a different conclusion. This stay does not change the
 20 fact the Court has resolved all pending merit issues on summary judgment. Because there are no
 21
 22

23 ¹ The DEA does not reference the *Hiken* factors but refers to a balancing test from *Morley v. CIA*,
 24 894 F.3d 389, 391 (D.C. Cir. 2018). Because these factors are substantively similar to the *Hiken* factors,
 and *Morley* is not binding, the Court applies the governing Ninth Circuit principles.

1 “lingering” issues at play, the Court will apply the governing tests to determine HRDC’s
 2 eligibility and entitlement to fees.

3 1. Fee eligibility: *First Amendment Coalition* factors

4 HRDC contends that the *First Amendment Coalition* factors weigh in its favor. As for the
 5 first factor, it says that the “filing of this action was the substantive cause that triggered [the]
 6 DEA to release disclosable public records, at least twice over.” Dkt. # 53 at 18. According to
 7 HRDC, before filing this action in federal court, the DEA “flatly refused to provide a single
 8 record” three times: (1) by denying HRDC’s initial records request; (2) after HRDC submitted a
 9 second amended and narrowed request; and (3) by denying HRDC’s administrative appeal. *Id.*;
 10 Dkt. # 27 at 3–4 ¶¶9–12, 14–22.

11 As for the second factor, HRDC says that only after filing this action did the DEA
 12 “unilaterally change[] its position, conceding for the first time that it could and would produce
 13 responsive records” that were “heavily redacted.” Dkt. # 53 at 18, 20; Dkt. # 28 at 2 ¶¶2–8, 8–
 14 27. HRDC says that, even before the parties’ filed their first round of summary judgment
 15 briefing, it had “already achieved a ‘voluntary’ and ‘unilateral’ change in [the] DEA’s position
 16 by virtue of bringing this lawsuit.” Dkt. # 53 at 19. HRDC also asserts that it “substantially
 17 prevailed a second time,” through the Court’s first summary judgment order, because the Court
 18 directed the DEA to remove redactions from 381 pages of its previous production. *Id.* (citing
 19 Dkt. ## 46, 49); Dkt. # 54 at 2 ¶¶ 2–3.

20 And as for the third factor, HRDC concludes that it has always been entitled to these
 21 documents, as evinced by the DEA’s “voluntary partial release of records prior to summary
 22 judgment” and its subsequent release of information in response to the Court’s first summary
 23 judgment order. Dkt. # 53 at 20.

24 The DEA did not address any of these factors.

The Court concludes that HRDC is eligible for an award of fees. First, every document released by the DEA, about 1,700 pages of responsive pages, occurred after HRDC filed this case. *See* Dkt. # 28 at 8–9; Dkt. # 25 at 5–7. Next, of those pages released, many redactions were removed after the Court’s first summary judgment order. *See generally* Dkt. # 33. Finally, the DEA’s decision to voluntarily disclose multiple files—only after this action was filed in federal court—show that HRDC was entitled to the documents at an earlier time. *See* Dkt. # 28 at 2, 8–11. The Court concludes that, on balance and for the reasons outlined in HRDC’s briefing, *see* Dkt. # 53 at 19–23; Dkt. # 57 at 18–21, HRDC is eligible for fees because it has presented convincing evidence that the filing of the action “had a substantial causative effect on the delivery of the information.”” *First Amend. Coal.*, 878 F.3d at 1127 (quoting *Church of Scientology*, 700 F.2d at 489).

2. Fee entitlement: *Hiken* factors

HRDC asserts that the *Hiken* factors show that it is entitled to an award of fees. As for the first and third factors, HRDC says that it is a “non-profit public-interest group that advocates for the human rights of detained persons” and seeks information from the DEA as a “part of an ongoing investigative reporting project into various government agencies’ practice in settling claims and lawsuits.” Dkt. # 53 at 20 (citing *Prison Legal News v. Samuels*, 787 F.3d 1142, 1151 (D.C. Cir. 2015); *Hum. Rts. Def. Ctr. v. U.S. Dep’t of Homeland Sec.*, No. C18-1141 TSZ, 2021 WL 1264003, *4 (W.D. Wash. Apr. 6, 2021).

As for the second factor, HRDC contends that courts typically award fees if the interest in the information sought was scholarly or journalistic, which it claims is its motive here. Dkt. # 53 at 21 (citing *Long*, 932 F.2d at 1316). And as for the fourth factor, HRDC says that the DEA’s refusal to disclose any files before the filing of this action, followed by its later voluntary and court-directed disclosure, shows that it had no “reasonable basis in law.” *Id.*

1 The DEA does not dispute that HRDC seeks these files to make clear the agency's
 2 practice in settling civil claims and lawsuits. *See* Dkt. # 53 at 20–21; Dkt. # 55 at 22–23
 3 (absence); Dkt. # 59 at 17 (absence). Nor does the DEA contest that HRDC, a 501(c)(3)
 4 organization that advocates for the human rights of detained persons, seeks this information for
 5 non-commercial "scholarly" or "journalistic" publication. *See* Dkt. # 53 at 20–21; Dkt. # 55 at
 6 22–23 (absence); Dkt. # 59 at 17 (absence). And the DEA does not dispute that since HRDC
 7 filed this case, it has voluntarily disclosed multiple previously withheld files to HRDC. *See* Dkt.
 8 # 28 at 2, 8–11. Further, in its previous summary judgment order (Dkt. # 33), the Court
 9 determined that the DEA wrongly redacted multiple items in its files, such as (1) the names of
 10 alleged tortfeasors who are DEA employees; (2) the case numbers, judge and attorney names,
 11 and litigant names in publicly filed civil lawsuits; and (3) the names of DEA employees accused
 12 of wrongdoing named in settlement agreements in which the agreement contains a provision
 13 permitting public disclosure. Dkt. # 33 at 33–34.² After consideration of these factors, and for
 14 the reasons raised in HRDC's briefing, *see* Dkt. # 53 at 17–22; Dkt. # 57 at 18–23, Court
 15 concludes that HRDC is entitled to an award of fees.

16 For these reasons, the Court determines that HRDC is the substantially prevailing party
 17 and is eligible and entitled to reasonable attorney fees and costs. *See* 5 U.S.C. § 552(a)(4)(E).

18 III

19 CONCLUSION

20 Accordingly, the Court ORDERS the following:

21 1. As for the redaction of narrative claim descriptions and non-private agency
 22 information in Files 63 and 138, the Court DENIES Plaintiff's motion and GRANTS

23 ² The DEA only disclosed Files 18 and 19 to HRDC after the Court directed it to submit
 24 supplemental briefing on its decision to withhold the purportedly "sealed" Files 18 and 19. *See* Dkt. # 33
 at 33; Dkt. # 44 at 3 ¶¶ 9–11.

Defendants' motion, determining that Defendants properly invoked exemption 6 in redacting this information.

2. As for the redaction of information in File 24, the Court DENIES Plaintiff's motion and GRANTS Defendants' motion, determining that Defendants properly invoked exemption 6 in redacting this information.

3. As for attorney fees, the Court GRANTS Plaintiff's motion and DENIES Defendants' motion.

Dated this 7th day of June, 2024.

John H. Chan

John H. Chun
United States District Judge